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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,634	12/17/2001	S. Scott Friderich	KCC-16,270	2745

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,634

Applicant(s)

FRIDERICH ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claim 5, the abbreviation "osy" should be elongated to "ounces per square yard".

Claim 16 is objected to because of the following informalities: In line 2, the claim recites "the tensioning force". There is insufficient antecedent basis for this limitation.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by McCormack USPN 5855999.

As to claim 1, McCormack discloses a breathable, liquid impervious material suitable for a containment flap in an absorbent article. McCormack discloses her invention has applicability in absorbent articles where comfort, breathability, and liquid impermeability are desired (col. 1, lines 18-31). Additionally McCormack discloses a laminate of the material can be formed, which is very soft (col. 6, lines 43-45). The combination of liquid impermeability and softness creates a material that is suitable for a containment flap in an absorbent article.

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As to claim 3, McCormack discloses the material is a laminate of thermoplastic film and nonwoven facing materials (col. 5, lines 45-55).

As to claim 4, McCormack discloses the nonwoven facing material is a polypropylene spunbond (col. 8, line 66 through col. 9, line 2).

4. Claims 1, 6, 9, 10, 15, 16, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Buell USPN 5085654.

As to claims 1 and 9, Buell discloses an absorbent article **10** comprising: a) an absorbent chassis, the chassis having a longitudinal axis **18**; b) a containment flap **15** comprising a breathable liquid impervious barrier material (col. 8, line 61 through col. 9, line 45), the flap having a free edge and an attached edge, the attached edge being attached to the chassis (Figures 1, 3, and 4).

As to claims 6 and 10, Buell discloses the barrier material comprises a microporous film (col. 7, lines 6-8 where Buell incorporates by reference Crowe, Jr. who describes a microporous film as a breathable backsheet (col. 2, lines 1-2).

As to claim 15, Buell discloses the flap is integral with an outer cover of the article (Figure 4).

As to claim 16, Buell discloses the flap includes elastics within the flap to supply a tensioning force (col. 8, lines 1-33).

As to claim 25, Buell discloses the absorbent article of claim 9, comprises one of a diaper; a training pant; an article of swim wear; an absorbent underpant; an adult incontinence article; a feminine hygiene article; or a medical protective garment (Figure 1).

5. Claims 2, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack.

As to claim 2, McCormack discloses the present invention substantially as claimed. However, McCormack does not specifically disclose WVTR value of greater than about 5,000 gsm/24 hrs. McCormack teaches WVTR rates as high as 4300 g/m²/24hours. Additionally, McCormack recognizes the stretching of the film can be varied and this will affect the WVTR (col. 14, lines 11-26). McCormack, therefore recognizes the WVTR is a result effective variable of orientation and degree of stretching of the film. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of McCormack with the claimed WVTR, since discovering an optimum value of a result effective variable involves only routine skill in the art.

As to claims 7 and 8, McCormack discloses the present invention substantially as claimed. However, McCormack does not disclose the material has a Young's modulus (modulus of elasticity) of up to about 14 psi/% in the first axis and a Young's modulus of

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up to about 212 psi/% in the second axis. However, pages 24, line 10 through page 26, line 2 of the specification sets forth materials and structure capable of having the claimed modulus of elasticity. McCormack teaches similar materials for the film layer, particularly, a breathable necked bonded laminate (col. 3, line 55 through col. 4, line 59 and col. 5, line 55 through col. 6, line 31). Thus, McCormack obviously includes film layer capable of having the claimed modulus of elasticity. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the reference has met the structural requirements of claim 1.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack in view of Morman USPN 5226992.

McCormack discloses the present invention substantially as claimed. However, McCormack does not disclose the nonwoven facing material has a basis weight of 0.4 osy. Morman discloses a neckable material having a basis weight of 0.4 osy (col. 6,

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lines 5-21 and col. 9, lines 1-7) for the benefit of economically producing a disposable product. Mormon further discloses the material is necked to about 45% of its original width (col. 9, line 35-41). Mormon teaches the relation between the original dimensions of the neckable material to its dimensions after tensioning determine the approximate limits of stretch of the composite elastic necked-bonded material. Mormon further teaches the elastic limit of the elastic sheet needs only to be as great as the minimum desired elastic limit of the composite elastic necked-bonded material. Mormon, therefore recognizes the elastic limit is a result effective variable of the percentage of necking. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of McCormack with the claimed percentage of necking, since discovering an optimum value of a result effective variable involves only routine skill in the art, and Mormon additionally teaches the necked percentage is desired.

The layer further comprises spunbond substantially continuous polypropylene fibers (McCormack col. 10, lines 63-65).

McCormack discloses the claimed invention except that McCormack discloses polyethylene films instead of polyether block amide film. Mormon shows that for the purpose of his invention, polyether block amide film is an equivalent structure known in the art (col. 5, lines 61-66, col. 6, line 55 through col. 7, line 2; and col. 11, lines 43-55). Therefore, because these two were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute polyether block amide film for polyethylene film.

Morman/McCormack disclose an elastic sheet having a basis weight of 0.5-10 oz, which includes the claimed range (col. 9, lines 1-2), and can comprise a polyamide film (col. 11, lines 43-55).

7. Claims 9, 11-13, and 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack in view of Sauer USPN 5938652.

As to claim 9, McCormack discloses an absorbent article comprising an absorbent chassis, which inherently has a longitudinal axis (col. 10, lines 43-52). McCormack discloses her invention is suitable for use as a topsheet or backsheet in an absorbent article (col. 10, lines 43-52). However, McCormack does not specifically disclose the film/composite is used as a containment flap. Sauer discloses a containment flap comprising a laminate or breathable, microporous film (col. 9, lines 28-41), which can be formed from an extension of the topsheet or backsheet (col. 9, lines 1-2) for the benefit of better containment of body exudates and, in particular, runny fecal material (col. 3, lines 31-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the absorbent article of McCormack to include containment flaps for the benefits disclosed in Sauer.

As to claim 11, McCormack/Sauer discloses the containment flap comprises a transversely extendible film (Sauer col. 3, lines 18-22).

As to claims 12 and 14, McCormack/Sauer discloses the containment flap has a long axis and a transverse axis, the long axis being parallel to the longitudinal axis of the chassis, the flap having a tensioning force in its long axis in that it is well known in the art that a stretch-bonded laminate, such as described in McCormack, provides an elastic property in at least the longitudinal direction, and generally in the lateral direction as well. McCormack/Sauer further disclose the flap has a low modulus of elasticity in its transverse axis and being extendible in its transverse axis - see col. 10, lines 2-38 where Sauer discloses it is desirable for the containment flap to be less extensible in the transverse direction to provide a more optimum fit and seal about the front abdominal region of a wearer.

As to claim 13, McCormack/Sauer discloses the present invention substantially as claimed. However, McCormack/Sauer does not disclose the material has a Young's modulus (modulus of elasticity) of about 14 psi/% or lower. However, pages 24, line 10 through page 26, line 2 of the specification sets forth materials and structure capable of having the claimed modulus of elasticity. McCormack teaches similar materials for the film layer, particularly, a breathable necked bonded laminate (col. 3, line 55 through col. 4, line 59 and col. 5, line 55 through col. 6, line 31). Thus, McCormack obviously includes film layer capable of having the claimed modulus of elasticity. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP

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2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980). In the present case, the combined references have met the structural requirements of claim 9.

As to claim 17, McCormack/Sauer discloses the transversely extendible film is a microporous film of about 10 to about 68 weight percent predominately linear polyolefin polymer about 2 to about 20 weight percent of a bonding agent, and about 30 to about 80 weight percent particulate filler (McCormack col. 3, lines 55-62).

As to claim 18, McCormack/Sauer discloses the polyolefin polymer is a linear low density polyethylene (McCormack col. 4, lines 3-6 and col. 5, lines 14-17).

As to claim 19, McCormack/Sauer discloses the microporous film comprises a filler and first and second polymers, the first polymer being a blend of ethylene and propylene (McCormack col. 4, lines 5-6 and col. 6, lines 24-31).

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As to claim 20, McCormack/Sauer discloses the containment flap comprises a spunbond material (McCormack col. 9, lines 1-2).

As to claim 21, McCormack/Sauer discloses the spunbond material is a polyolefin (McCormack col. 9, lines 1-2).

As to claim 22, McCormack/Sauer discloses the spunbond material is polypropylene (McCormack col. 9, lines 1-6).

As to claim 23, McCormack/Sauer discloses the flap comprises crimped nonwoven/extensible film laminates (McCormack col. 9, lines 7-15 describes crimped fibers constituting the nonwoven material. McCormack col. 4, lines 3-29 and col. 9, lines 50-61 disclose the film is extendible).

As to claim 24, McCormack/Sauer discloses the film comprises a stretched microporous film (McCormack col. 4, lines 12-19 and Sauer col. 9, lines 39-41 and col. 13, line 50 through col. 14, line 24).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



September 5, 2003



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